IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 92 OF 2001

Sangeeta B. Kadam
residing at 26/816, Tagore Nagar,
Vikhroli, Bombay - 400 079. .. Appellant

Versus

Balkrishna Ramchandra Kadam
residing at 9/153, Ekprastha Co-op.
Housing Society Ltd.,
Vakola Bridge,
Santacruz (East), Bombay - 400 055. .. Respondent

Mr. M.D. Angal for the appellant.

Mr. S.S. Shah for the respondent.

CORAM : H.L. GOKHALE &
R.S. MOHITE, JJ.

DATE OF RESERVING THE JUDGMENT : 29TH NOVEMBER 2004

DATE OF PRONOUNCING THE JUDGMENT: 13TH JANUARY 2005

JUDGMENT : (PER H.L. GOKHALE, J.)

1. This Family Court Appeal by the appellant wife seeks to challenge the judgment and order dated 11th June 2001 passed by a learned Judge of the Family Court at Bandra, Mumbai in Misc. Application No.47 of 1998 rejecting the same. The Misc. Application decided by the Family Court arose as a result of a remand to that Court by the Hon’ble Supreme Court vide its order dated 4th September 1997 passed in Civil Appeal No.126 of 1993 directing the Family Court to decide the limited issue

with respect to the claim made by the appellant wife under section 27 of the Hindu Marriage Act, 1955 concerning the return of ornaments and other articles. This judgment of the Apex Court is in the case of **Balkrishna Kadam v. Sangeeta Kadam is reported in AIR 1997 SCC 3562**. These ornaments and articles were claimed by the appellant in her written statement to M.J. Petition No.662 of 1982 filed by the respondent husband seeking divorce.

2. The short facts leading to this appeal are as follows:-

. The appellant and the respondent were married on 11th May 1969 as per the Hindu Vedic Rites in Mumbai. It appears that within a few months after the marriage, disputes developed between the parties on various aspects. However, to put it shortly, initially the disputes appear to have started because of the appellant wife and her mother-in-law not getting along well with each other. Whereas it is the case of the appellant wife that the mother-in-law did not treat her well and that the respondent husband and the mother-in-law used to ill treat, abuse and assault the appellant. On the other hand, it was the case of the respondent husband that it was the appellant wife who ill treated her

mother-in-law. It also appears that the accommodation, wherein the parties lived initially at Ghodapdev in Central Mumbai, was a very small one. The parties later on shifted to an apartment at Santacruz and, though the same was in the name of the respondent husband, there is a controversy as to who made the principal contribution towards the purchase of the flat. The grievance of the appellant wife is further that the respondent had taken to drinking and later on developed illicit relations with another lady. The appellant was initially working as a Comptist in Philips (India) Ltd. with a good salary and has hence retired therefrom, whereas the respondent husband was in the ministerial cadre in the Home Department of the State of Maharashtra and subsequently retired as Deputy Secretary. It is not disputed that the appellant wife at all material times had a far better salary than the respondent husband. The parties gave birth to three children during the course of their unhappy marital life, i.e. a son named Rajesh born on 21st April 1970, a daughter named Unnati born on 6th December 1979 and a son named Suprasad born on 5th July 1981. It appears that after the birth of the first child, the appellant wife went away and stayed at another flat at Vikhroli only to return after a few years. During this turbulent relationship between the two, the three children all throughout remained with

their mother.

3. The respondent husband filed M.J. Petition No.662 of 1982 in the City Civil Court at Mumbai seeking divorce on the ground of cruelty. The appellant wife contested this petition and in the written statement filed by her to this M.J. Petition, she claimed that she had left behind her ornaments of gold and silver and various household furniture and articles in the matrimonial home. It is material to note that the respondent husband did not file any counter to these averments. The aforesaid averments at the end of para 17 of her written statement read as follows:-

> "17. ... The Respondent states that all ornaments and other articles which are purchased by the Respondent from her own earning are lying with the Petitioner in his flat at Santacruz. Hereto annexed and marked Exh."A" is the list of the ornaments of all types, household articles including freeze, T.V., cooker etc. and show pieces, lying in the Petitioner's house at Santacruz and which are purchased by the Respondent from her own earnings. The Respondent states that everything mentioned in Ex."A" belongs to the Respondent as those items

are purchased by the Respondent from her earnings. The Respondent states that this Hon'ble Court be pleased to order the Petitioner to handover those articles mentioned in "A" to the Respondent. The Respondent states that the keys of the locker are also with the Petitioner and that can be found from the averments made in para No.24 of the Petition. The Respondent states that if at all the Respondent had taken the keys of the locker, the Respondent does not understand as to how the Petitioner opened the locker thereafter."

4. This Exhibit "A" contains the following articles.

"LIST OF THE ARTICLES OF THE RESPONDENT AT THE PLACE OF PETITIONER

A) Gold Ornaments:

1) Kuyari necklace of 45 grams with one green stone.

2) 2 double stringed chains of 25 grams and 30 grams respectively.

3) 1 chain of 17 grams which was given by the respondent's brother to Rajesh.

4) 1 chain of corals (powala) with gold beads of 40 grams and 24" in length.

5) 1 flower with three leaves.

6) 1 double string Kanti necklace of 52.250 grams.

7) Mangalsutra of 54.200 grams.

8) 4 bangles of 58 grams.

9) 3 pairs of earrings of 27 grams.

10) Pearl bangles.

11) Patlyas of 55 grams.

12) 1 nose ring of 5 grams.

13) 1 bugadi of 8 grams.

14) 6 rings (2 belong to 2 sons and 4 belong to the Respondent of 40 grams)

15) 1 chain of 8 grams belonging to Unnati.

16) 1 ring of 3 grams belonging to Unnati.

B) Silver Ornaments:

1) 4 pairs of silver anklets.

2) 4 waist bands.

C) Furniture:

1) Kitchen unit - size 10′ x 8′, 10′ x 4′ full wall and 10′ x 3′ half wall.

2) Show case with wardrobe and with T.V. case - size 6′ x 4′.

3) Wall cabinet size - 4′ x 1′ and 3′ x 1′ and 3′x1′.

4) Folding Diwan.

D) Other articles:

1) E.C. T.V.

2) 1 fan

3) 1 transistor

4) Allwin fridge

5) 1 pressure cooker

6) 4 Lionare show lamps (lamp shade - Philips)

7) 1 big Nanda-deep

8) Many small utensils

9) Mangesh murti

5. In the aforesaid written statement filed by the appellant wife to this M.J. Petition No.662 of 1982, she denied all the allegations of cruelty. On the other hand, she contended that it was the respondent husband who had treated her with cruelty. She, therefore, filed M.J. Petition No.583 of 1986 for judicial separation on the ground of cruelty. Both these petitions filed by the husband and the wife were directed to be heard together and after evidence was recorded and documents tendered and considered, the learned Judge of the City Civil Court at Mumbai by his judgment and order dated 21st April 1987 dismissed the petition filed by the husband, whereas he granted judicial separation to the appellant wife on the petition filed by her. The learned Judge framed various issues and amongst others, Issue No.4 was as follows:-

> "4) Is it proved that the respondent (wife) is entitled to the gold ornaments and property

mentioned in Exhibit "A" to the written statement?"

. As far as this issue is concerned, the learned Judge formed an opinion that as per the pleadings and contentions of the wife, the ornaments and articles were those which were either purchased or acquired by her and that he did not have jurisdiction to go into the question of her entitlement under section 27 of the Hindu Marriage Act, 1955 which is the section governing the disposal of marital property when an appropriate decree is to be passed on a matrimonial proceeding. He, therefore, answered Issue No.4 as follows:-

"No finding is given."

6. Since a decree for judicial separation was granted, the husband filed M.J. Petition No.909 of 1988 before the Family Court at Mumbai after the passage of statutory period of one year and prayed for a decree of divorce. The proceeding was now filed in the Family Court since in the meanwhile, the Family Courts Act, 1984 had come into force on 14th September 1984 and the Family Courts were established in Mumbai sometimes in the year 1989. The appellant wife opposed that petition, however the petition came to be granted by the

learned Judge of the Family Court on 27th February 1991.

7. In the meanwhile, the appellant wife had filed First Appeal No.15 of 1989 to challenge the judgment and order of the learned Judge of the City Civil Court passed in her M.J. Petition No.383 of 1986 to the extent it held that her claim for ornaments and articles was not maintainable under section 27 of the Hindu Marriage Act, 1955. The appellant wife had claimed maintenance for the children also and the learned Judge of the City Civil Court had awarded Rs.200/- per month per child from the date of the decree, i.e. from 21st April 1987. A learned Single Judge of this Court heard the said First Appeal No.15 of 1989 and allowed it only in part, in the sense that he directed the husband to pay the same maintenance though from the date of the presentation of M.J. Petition No.383 of 1986, i.e. from 4th April 1986. He further directed that the maintenance amount shall be payable till each child attains majority. The learned Single Judge, however, held that the appellant had claimed the property mentioned in Schedule "A" to her written statement as her own property. In para 11 of the judgment, he held that it is not possible to hold that she has established that those ornaments and the property were presented to her "at or at any time of marriage or to show that it

has become the joint property of both husband and wife". He, therefore, held that the learned Judge of the City Civil Court was right in holding that he did not have jurisdiction to pass an order making provision with respect to this property under section 27 of the Hindu Marriage Act.

8. The appellant wife preferred L.P.A. No.74 of 1991 against this judgment of the learned Single Judge. She also filed Family Court Appeal No.27 of 1992 against the judgment of the Family Court in M.J. Petition No.909 of 1988 granting divorce to the husband. Both these L.P.A. and the F.C.A. were heard together by a Division Bench. The Division Bench took the view that section 27 of the Hindu Marriage Act did not cover the claim for ornaments and properties which were not presented to a wife at the time of marriage. It, however, held that it can grant relief in respect of such a property by invoking section 151 of Civil Procedure code. This judgment of the Division Bench is reported in **AIR 1994 Bombay 1 = 1994 MLJ 230 (Sangeeta Kadam v. Balkrishna Kadam)**. The Division Bench, therefore, granted a decree in favour of the appellant wife allowing her claim for the ornaments and articles mentioned in Exhibit "A" to her written statement. It confirmed the decree passed by the learned Single Judge

granting maintenance to the children from the date of filing of M.J. Petition No.383 of 1986. The Division Bench, however, confirmed the decree of divorce granted by the Family Court in M.J. Petition No.909 of 1988 and, therefore, dismissed the Family Court Appeal No. 27 of 1992 filed by the wife.

9. The respondent husband felt aggrieved by the order of the Division Bench to the extent it allowed the claim of the appellant wife for the ornaments and the articles. He, therefore, filed Appeal No.126 of 1993 to the Apex Court. The Apex Court held that section 27 of the Hindu Marriage Act does not include only the property given at the time of the marriage, but would also include the property given before or after the marriage to become their joint property. The Court, however, held that no proper trial had been held of the issue relating to the grant of this relief under section 27 as claimed by the respondent wife. It is, therefore, that the Apex Court remanded the matter back to the Family Court. The judgment of the Apex Court is reported in **AIR 1997 SC 3562 (Balkrishna Kadam v. Sangeeta Kadam)**. After the matter was remanded only on this issue, the revived proceeding came to be numbered as Misc. Application No.47 of 1998. The parties gave an application that they did not want to lead any

additional evidence, but the evidence that was led earlier be considered as the evidence on the issue which was remanded to the Family Court. Thereafter the learned Judge heard the arguments of the counsel and dismissed this Misc. Application concerning the claim of the appellant wife towards the ornaments and articles. The learned Judge held that since the wife had not adduced any evidence to establish her claim, her contention could not be accepted. It is being aggrieved by this judgment and order that the present Family Court Appeal has been filed.

10. Before we deal with the submissions made by counsel for both the parties, it will be appropriate to refer to section 27 of the Hindu Marriage Act under which the claim has been made. This section 27 reads as follows:-

> "**27. Disposal of property**.- In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

The Apex Court has clarified the scope of this section in Balkrishna Kadam v. Sangeeta Kadam reported in AIR 1997 SC 3562 as noted above. In para 10 and 13 of this judgment, the Apex Court held as follows:

> "10. On a plain reading of the section, it becomes obvious that the Matrimonial Court trying any proceedings under the Hindu Marriage Act, 1955 has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented "at or about the time of marriage" which may belong jointly to both the husband and the wife. This section provides an alternative remedy to the wife so that she can recover the property which is covered by the section, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate Civil Suit and avoid further litigation."
>
> 13. ... Moreover, the property, as contemplated by section 27 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so

> long as it is relatable to the marriage. The expression "at or about the time of marriage" has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "joint property", implying thereby that the property can be traced to have connection with the marriage. All such property is covered by section 27 of the Act."

11. It is further material to note that while holding in para 14 of this judgment that there has not been any proper trial on the issue relating to the grant of relief under section 27 of the Hindu Marriage Act, the Apex Court did hold that section 27 was attracted to the present claim. The Court in terms observed at the end of para 14 as follows:-

> "14. .... Except holding that section 27 is attracted to the fact situation in the instant case, we express no opinion on the merits of the

> claim laid by the wife and disputed by the husband. The claim of the respondent shall be decided independently by the Family Court uninfluenced by any observations made by us herein."

12. Mr.Angal, learned counsel for the appellant, therefore, submitted that the Apex Court had already held that section 27 of the Act did apply to the fact situation of the present case. As far as the evidence is concerned, in his submission, the evidence was already led when the matter was contested before the City Civil Court. He pointed out that on remand an application had been filed before the Family Court that the evidence led earlier be looked into. The learned Judge of the Family Court has ignored this aspect and has erred in holding that no evidence was led by the appellant wife. He submitted that in fact both the parties had asked the learned Judge to look into the evidence which was recorded earlier. That being the

position, borne by the record, the learned Judge was expected to look into that evidence. The submission of Mr.Angal is not countered by Mr.Shah, learned counsel for the respondent, on this aspect.

13. When we look into this evidence recorded earlier, what we find is that the claim of the wife was mainly in two parts. Firstly, it consisted of the claim for ornaments consisting of gold and silver and secondly for furniture and other articles. Although the wife in para 20 of her examination in chief stated that she renovated the house and shifted some of her articles over there, she accepted in para 92 of her cross examination that the television set is in the name of the husband. In para 20, she stated that she spent some Rs.25,000/- to Rs.30,000/- for renovation of the Santacruz flat. She got the flat painted, changed its wiring, fixed the geyser in the bathroom and made new

furniture in the kitchen and also the wardrobe. This is denied by the respondent husband. He put it to her in her cross examination that he paid for large items of expenditure or repairs by cheque though it was denied by her. As far as the refrigerator is concerned, though the appellant wife produced the receipt, it was not in her name, but it was in the name of a friend of the husband by name Mr.Khatwani. Thus, as far as the furniture items and these articles are concerned, by and large the evidence is in the nature of oral deposition of the parties except that the receipt for the television is in the name of the husband and that of the refrigerator in the name of his friend. It is also material to note that it is the husband who was staying at the Santacruz flat and the appellant wife left it initially after the birth of the first child sometimes in the year 1972 to return only after a few years in the year 1977-78. In the meanwhile, she was staying at

Vikhroli. It is true that the parties resumed their cohabitation thereafter leading to the birth of the second child. However, after the birth of the second child in December 1979, she again went back to Vikhroli. She stated that the respondent husband used to come to Vikhroli and they used to cohabit and this led to the birth of the third child in the year 1981. Although it is true that she was having a much better salary than the respondent husband and she must have put in some amount for a better living in the flat at Santacruz, it is not possible to accept that all the items of furniture and the articles listed by her in her Exhibit were bought by her for the residence at Santacruz where all throughout the respondent husband undoubtedly continued to stay. As far as the wife is concerned, she appears to have stayed in that flat for a couple of years during 1970-72 and then during 1977-79. From 1972 onwards, she maintained a separate flat at Vikhroli and

although she stayed in the Santacruz flat during 1977-79, she shifted to Vikhroli for good after the birth of the second child in December 1979. In the absence of adequate evidence on record and on probabilities, it is not possible to accept her claim for the items of furniture and other articles in the Santacruz flat.

14. This leaves her claim for the gold and silver ornaments. As far as the gold ornaments are concerned, there are in all 16 items mentioned. The weight of these items as per the list comes to a total of 512.45 gms. Both the counsel have filed before this Court a without prejudice joint statement signed on 29.11.2004 stating that in the year 1982, (when the first proceeding between the parties started and when the ornaments are claimed) the market rate of gold (including for making changes) was approximately

Rs.2100/- per 10 gms and that therefore, the value of these ornaments will come to Rs.1,07,614.50. Mr.Shah states that this rate is arrived at on the basis of a contemporanious bill of a Government recognised Jeweller at Exhibit 4 before the Trial Court. We accept the same. As far as the silver ornaments consisting of 4 pairs of silver anklets and 4 waist bands are concerned, their weight has not been mentioned. One may take them as worth Rs.12,000/- to Rs.13,000/-. Therefore, on a rough basis one can take the value of the gold and silver ornaments together as Rs.1,20,000/-.

15. As far as the evidence with respect to these ornaments is concerned, in her deposition, the wife has stated that she had kept all her jewellery except a mangalsutra in a bank locker. It is not disputed that the bank locker was jointly in the name of both the parties with Bank of Baroda, Santacruz (East) Branch.

As far as the articles, which are kept in the locker are concerned, there cannot be any dispute about their list inasmuch as the list tendered to the Trial court is the common list in the handwriting of both the parties and it is marked as Exhibit "B" by the Trial Court. The list is attached at page 450 of the appeal compilation. The wife has stated in para 41 of her examination in chief that she had taken out some of the ornaments earlier in the month of August 1980 during the festivals in the month of Shrawan, but had deposited them back in September 1980 and thereafter she did not open the locker at any point of time. As far as this deposition of the wife is concerned, it is borne out and supported by the letter sent by the Manager of Bank of Baroda dated 17th October 1983 to the respondent husband. This letter shows that the locker was opened by the appellant wife on 17th January 1980 and then on 20th August 1980 and 19th September 1980. As against that, this letter

also records that it was opened by the respondent husband on 9th February 1980 and then on 9th May 1981. It is thus clear that it is the husband who had opened the locker last on 9th May 1981. On this background, one has to examine the grievance of the husband that when he opened the locker in 1981, he found that there were no ornaments therein. If he had opened the locker on 9th May 1981 and he did not found any ornaments therein, he would have immediately written to the appellant or lodged a complaint with the police. On the contrary, he mentioned about this for the first time in an Advocate's notice on 21st April 1982, i.e. nearly one year thereafter. In para 13 of this notice, it is mentioned that when the appellant was pregnant in the year 1981, she bitterly fought with her mother-in-law and went away to stay at Vikhroli. That time she had asked him about her monies and gold ornaments, the keys of the locker and other things. If this was so and if

he was the last person to open the locker on 9th May 1981, surely he would have told her immediately that she had removed the ornaments. On the other hand, even in this notice sent after one year he does not specifically allege that it is she who had removed the ornaments. What is material to note is that this notice is sent by him just a few days before filing the M.J. Petition No.662 of 1982 for divorce which was filed on 6th May 1982.

16. As far as the ownership of the ornaments is concerned, there is not much of dispute. In para 41 of the cross examination of the husband, he has accepted that the wife's father gave her good many ornaments at the time of marriage. He stated that the ornaments consisted of one gold chain with beads (mala) and two bangles. He further stated that he gave her mangalsutra weighing 3 tolas, gold ring weighing half tola, necklace

(haar) weighing three tolas. The ornaments which his father made for his mother consisted of gold chain with beads, two bangles and one "sonyache phul" worn on the head, gold ring and ear-rings. He thereafter stated that various ornaments were prepared for the respondent wife from the savings of his mother. Thus, from his deposition, it is clear that the ornaments were either given to the wife by her parents or from the husband’s side at the time of marriage and they belong to her and form a part of the stridhan, which surely belongs to her only. It is also material to note that apart from the fact that husband has filed no counter to the appellant’s claim for the ornaments, in the oral evidence, there is no denial of the fact that either these gold ornaments were given by the wife’s parents or purchased by her or gifted to her by husband’s parents in marriage. Besides, if it is the case of the respondent husband that some of the articles were given

by his parents and they were removed from locker by the appellant wife when she was carrying sometimes in first half of 1981, surely he would have immediately objected since some of those ornaments were given by his parents and lodged a police complaint. On the other hand, when the appellant wife was carrying on the third occasion and was constrained to stay at Vikhroli, she would not be in a condition to go to the bank in Santacruz and to remove the gold ornaments. The fact that she was carrying at that time coupled with the fact that the relations of both of them were strained and she was staying at Vikhroli, coupled with also the fact that the bank locker was lastly opened by the husband in May 1981 and that he did not allege the disappearance of the ornaments until the letter of 21st April 1982 go to support the contention of the appellant that it is the respondent husband who had removed the ornaments from the bank locker.

17. There is another aspect of this matter to which we must advert to. As far as the question of jurisdiction of the court to deal with the claim for the ornaments is concerned, now there is a slight change. It is true that while contesting the original petition for divorce filed by the husband, the wife lodged her counter claim in her written statement to claim the ornaments and articles. The claim is widely worded as noted above and it mentions that those are her ornaments and articles either purchased by her or belonging to her. At the time when the two matrimonial petitions for divorce and judicial separation came to be decided by the learned Judge of the City Civil Court on 21st April 1987, the Family Court was not constituted in the city of Mumbai. Based on the decree of judicial separation granted by the City Civil Court on 21st April 1987, the Family Court did grant the decree of divorce on 27th

February 1991. When L.P.A. No.74 of 1991 was decided by the Division Bench, Mr.Angal did advance the argument that since the final order of divorce was granted by the Family Court, the court should consider the maintainability of the wife's claim on the basis of section 7 of the Family Courts Act. This is seen from para 9 of the Division Bench judgment reported in AIR 1994 Bombay 1 = 1994 MLJ 230. The Division Bench rightly did not accept this submission inasmuch as the grant of divorce by the Family Court was only a matter of consequential proceeding subsequent to the passing of a decree of judicial separation. However, when the Apex Court remanded the matter back to the Family Court to examine the question of claim made by the appellant wife, the court was expected to look into the plaint and the written statement afresh. The proceeding though initiated in the year 1982 was entirely open before the Family Court on the question of claim towards the

ornaments and articles. It could be argued earlier that section 27 was a restricted section and it covered only the property presented at or after the marriage. As far as the property owned by the husband or wife separately is concerned, the party would be required to file an independent civil suit. The jurisdiction of the Family Court is however wide. Under explanation (c) to section 7(1) of the Act, it has the jurisdiction to decide a suit or proceeding between the parties to a marriage with respect to the property of the parties or either of them. The relevant provision of section 7(1) with its explanation reads as follows:-

> "**7. Jurisdiction**.- (1) Subject to the other provisions of this Act, a Family Court shall -
>
> (a) have and exercise all the jurisdiction exercisable by any district court or any

subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a) ....

(b) ....

(c) a suit or proceeding between the parties to

a marriage with respect to the property of the parties or of either of them."

18. As far as the claim for the separate property of either of the parties to a marriage is concerned, the husband or the wife were required to file a separate suit earlier and the claim was not covered under section 27 of the Hindu Marriage Act. Now the Family Court will have full jurisdiction to entertain it. Under section 7(1) of the Act, the Family Court can exercise the jurisdiction exercisable by any District Court. As far as this phrase is concerned, earlier there was a controversy. A single Judge of this Court (M.G. Chaudhari J.) had taken a view in **Kamal Allaudin v. Raja Shaikh reported in 1990 (2) BCR 335** that the Family Court not only exercises the jurisdiction hitherto exercised by the District Court or subordinate Civil or Criminal Court but it is deemed to be a District Court

or the subordinate District Court for the area to which the jurisdiction of the Family Court extends. The learned Judge held that the jurisdiction of the High Court also would stand transferred to the Family Court. Another learned Single Judge (A.A. Cazi J.) in the case of **Kanak Vinod Mehta v. Vinod Dulerai Mehta reported in 1991 (1) BCR 69** doubted the correctness of this proposition and, therefore, referred the question to a Larger Bench. A Division Bench in **Kanak Vinod Mehta v. Vinod Dulerai Mehta reported in 1991 (2) MLJ 1064** took the view that the jurisdiction of the High Court on the Original Side to the extent it is covered under section 7 of the Family Courts Act is not transferred. The matter was later on referred to a Larger Bench and in **Romila Jaidev Shroff v. Jaidev Rajnikant Shroff reported in 2000 (3) MLJ 468**, a Full Bench took the view that the expression "district court" used in the Family Courts Act will include the High Court exercising

Original Civil Jurisdiction under clause 12 of the Letters Patent. The Court noted that the Division Bench which decided Kanak Mehta's case (supra) did not have before it the judgment of the Apex Court in **Raja Soap Factory & others v. S.P. Shantharaj & others reported in AIR 1965 SC 1449**, wherein the Apex Court has taken the view that a High Court if it possesses ordinary original civil jurisdiction, then it alone is the District Court. Relying on that judgment, the Full Bench held that it is the Family Court which will have jurisdiction with respect to the suits which are covered by the provisions of the explanation to section 7(1) of the Family Courts Act and not the High Court.

19. This being the position, as noted above, the Apex Court in the case of these very parties in para 14 of Balkrishna Kadam v. Sangeeta Kadam reported in AIR 1997 SC 3562 has in terms held that section 27 is

attracted to the fact situation in the instant case. It however did not express any opinion on the merits and directed the matter to be considered and decided on evidence. As we have held earlier, the appellant wife has established her claim, in any case, for the gold and silver ornaments in pursuance to the order of remand. However, looking at it from another point of view now that the matter is decided by the Family Court after remand, it is decided by a court vested with wider jurisdiction and even if it is contended that the ornaments were acquired or purchased by the appellant herself, they would still fall within the concept of property belonging to either of the parties under section 7(1) explanation (c) of the Family Courts Act, 1984.

20. The appeal is, therefore, allowed to the extent of the claim of the appellant wife for the gold and

silver ornaments though the respondent husband is denying that he has removed those ornaments. The value of the ornaments in the year 1982 was roughly Rs.1,20,000/-. At that time, the rate of interest could surely be said to be at least 10% though presently the interest rates have fallen. We, therefore, allow this appeal in part and direct the respondent husband to pay to the appellant the amount of Rs.1,20,000/- with simple interest at 10% per annum until realisation. The claim of the appellant wife for other articles and furniture is rejected. The appellant wife will pay the deficit court fee, if any, on this amount as required under section 149 of the Civil Procedure Code.

21. After the matter was remanded to the Family Court, the appellant wife moved an amendment on 24th September 1988 to claim the ownership of the flat at Santacruz. She submitted that this flat had been sold

by the husband to a third party in the year 1991 though it formed a part of her property. The application moved by her was however rejected by the learned Judge of the Family Court by an order dated 6th March 2000. He held in para 9 of his order that the matter, which was remanded to him, was for limited purpose of deciding the issue of Stridhan as claimed by the wife in her written statement, and the claim for ownership of this flat at 9/153, Ekprastha Co-operative Housing Society, Vakola Bridge, Santacruz, Mumbai will mean widening of the scope of the proceedings and the fundamental character thereof will change. The appellant wife filed a writ petition bearing No.3182 of 2000 to challenge this order. A learned Single Judge rejected it on 9th October 2000 by observing that the order was an interlocutory one and can be challenged in final hearing. Mr.Angal, therefore, submitted that the appellant should be allowed to agitate her claim with

respect to the flat in this appeal at this stage itself. It is not possible for us to accept this submission as noted above. The flat is supposed to have been sold to a third person, one Mr.Joshi in the year 1991. Relief is sought against this purchaser as well as the co-operative housing society. The amendment was sought much later in September 1998. In fact, Mr.Shah, learned counsel for the respondent opposes canvassing of this claim also on the ground of limitation. As against that, Mr.Angal submits that the claim is in the nature of a proceeding and the appellant should get the benefit of section 5 of the Limitation Act. In our view, considering the totality of the circumstances, it would be advisable that the appellant ought to file a separate proceeding for her claim towards this flat in appropriate court of law. It should be for that court to decide as to whether her claim is maintainable on all counts. We are not inclined to entertain it in the

present appeal.

22. In the circumstances, the appeal is allowed in part. The respondent is directed to pay the appellant an amount of Rs.1,20,000/- with simple interest at the rate of 10% from the year 1982. The appeal is allowed with costs all throughout.

(H.L. GOKHALE J.)

(R.S. MOHITE J.)

23. Mr. Shah, learned Counsel appearing for the respondent, applies for stay of the judgment and order. Mr.Angal, learned Counsel appearing for the appellant, objects to the grant of stay.

24. However, considering that this order is being

made now for the first time, we grant stay of the order for a period of eight weeks hereafter subject to deposit of the amount awarded with interest which till the end of 2004, comes to Rs.3,86,000/-.

(H.L. GOKHALE, J.)

(R.S. MOHITE, J.)